IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2308 OF 2005

Hashmat Parkar ... Petitioner

Vs.

The Haj Committee and Ors. ... Respondents

Mr. Sandeep Marne for Petitioner.

Mr. A.V. Bukhari with Mr. B.A. Bukhari for R. No. 1.

Mr. S.S. Pakale with Mr. R.C. Master for R. No. 2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 18, 2006

P.C.:

. Rule. Heard forthwith.

. The Petitioner had approached this court earlier by way of Writ Petition No. 27 of 2003 wherein he has challenged the appointment of one Mr. Ashik Nakhwa who was not eligible but had been considered whereas the Petitioner who was eligible was not considered. This court by order dated 20.2.2003 held that the relaxation of qualification had no basis and was arbitrary and capricious and accordingly set aside the appointment of Shri. Asiq Nakhwa. There was further direction that if the Petitioner has better qualification, his case may be considered.

. At the relevant time, there were eight posts. It is the case of the Petitioners that if the appointment of Mr. Nakhwa was set aside, his case has to be considered. His case has been considered much subsequently and he has been promoted by order dated 22.5.2004 along with Mr. Nakhwa. Mr. Nakhwa in that office order stands at Sr No. 1 and Petitioner at Sr. No. 2. The Petitioner thereafter was representing against the non-consideration from the back date and as the same has not been considered. Hence, the present petition.

. On behalf of the Respondent, their learned counsel submits that the Petitioner's case has been considered and he has been subsequently promoted. The Petitioner therefore could have no grievance. It is submitted that even thereafter the Petitioner has been promoted to the post of Assistant by relaxation. After the judgment of this court, D.P.C. could not be re-convened as the term of the committee had expired and fresh D.P.C. had to be constituted. It is also pointed out that the respondents were in communication with the Government of India for instructions.

. We have heard the learned counsel for the Parties. Before this court in Writ Petition No. 27

of 2003, it was not disputed that if the appointment of Mr. Nakhwa was set aside the Petitioner had to be considered. At the relevant time, there were eight vacancies. Mr. Nakhwa was one amongst the eight candidates. On his appointment being set aside, there would be one vacancy. In these circumstances, the respondents were bound to convene a review D.P.C. to consider the case of the Petitioner for appointment as U.D.C. Based on the meeting of the D.P.C. which had taken place on 3.9.2001. In other words, the Petitioners' case for appointment as U.D.C. has to be considered as on 3.9.2001. That has not been done and the Petitioner instead has been promoted only on 22.05.2004. In other words he has lost three years of seniority and other consequential benefits.

. In these circumstances, Respondent Nos. 1 and 2 are directed to convene a review D.P.C. to consider the case of the Petitioner for promotion against the post of U.D.C. as on 3.9.2001 and if found suitable to issue him letter of appointment as U.D.C. with effect from the date other selected candidates were appointed i.e. on 3.9.2001 with other consequential benefits. If the Petitioner is found eligible to be appointed on 3.9.2001 then the D.P.C. must consider the case of the Petitioner for appointment as Assistant after the completion of three years of

service as U.D.C. If the Petitioner is selected to the post of U.D.C. and subsequently to the post of Assistant, he should be fixed in the time scales to which he was entitled to and to be paid all consequential benefits including back wags.

. Rule made absolute accordingly. No order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**